

No. 16177

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United States  
Court of Appeals  
for the Ninth Circuit

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LYNDOL L. YOUNG and MILDRED W.  
YOUNG, Petitioners,  
vs.  
COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

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SUPPLEMENTAL  
Transcript of Record

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Petition to Review a Decision of The Tax Court  
of the United States

FIL

DEC 17

PAUL P. O'BR



United States  
Court of Appeals  
for the Ninth Circuit

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Petition to Review a Decision of The Tax Court  
of the United States



The Tax Court of the United States

Docket No. 57876

LYNDOL L. YOUNG and MILDRED W.  
YOUNG, Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

EXCERPT FROM PETITIONERS' BRIEF

\* \* \* \* \*

Petitioners' Request for Findings of Fact

1. Petitioners Lyndol L. Young and Mildred W. Young, husband and wife, and hereinafter referred to as Petitioner, Lyndol L. Young, are residents of Los Angeles County, California.

2. Petitioner was admitted to the California Bar in 1916, and to the Bar of the United States Supreme Court in 1921. Petitioner served as Assistant United States Attorney and Special Assistant United States Attorney in the years 1918 and 1919. Thereafter Petitioner practiced law in Los Angeles until 1928 when Petitioner withdrew from the law practice. From 1928 to 1934 Petitioner was connected with several large corporations as an officer and director, including Aviation Corporation, American Airways and other affiliated and wholly controlled corporations. From 1931 to 1934 Petitioner was located in New York and other eastern cities in connection with his corporation positions. In 1934

Petitioner resigned his corporate offices and returned to Los Angeles. In 1935 Petitioner resumed the practice of law in Los Angeles. (Tr. 6, 7, 8.)

3. From 1935 to 1955 Petitioner maintained an office in downtown Los Angeles but conducted the substantial part of his law practice from his home at 138 North June Street, which Petitioner sold in January, 1955. (Tr. 8, 9.)

4. In 1935 Petitioner was consulted by Mrs. Tierney, a client of many years, with reference to legal matters. These consultations took place at 138 North June Street, and were continuous until 1938 when Mrs. Tierney died. At no time did Mrs. Tierney consult Petitioner in his downtown law office, and she was never in said office at any time. Upon the demise of Mrs. Tierney Petitioner became Executor and Trustee of her estate, which was appraised at approximately \$900,000.00. Petitioner also became guardian of the estates and persons of the three minor children of Mrs. Tierney. The substantial services of Petitioner as such Executor, Trustee, guardian and attorney were rendered at 138 North June Street. Petitioner purchased a home for said minor children within a short distance from his home and said children consulted and conferred with Petitioner at his home on numerous occasions during the time Petitioner occupied said premises, to wit, to 1955. (Tr. 9, 10.)

5. Mrs. Katherine C. Iten, the mother of Mrs. Tierney, was also a client of Petitioner's and conferred with Petitioner at 138 North June Street

from 1935 to 1943, when Mrs. Iten died. Mrs. Iten never conferred with Petitioner at his downtown office. Upon the death of Mrs. Iten Petitioner became Executor and Trustee of her Will, and the substantial services of Petitioner in said estate were performed by Petitioner at 138 North June Street. (Tr. 10, 11.)

6. Petitioner received substantial benefits from Mrs. Tierney and her estate during the period 1935 to 1955, from services performed by him amounting to approximately \$232,000.00. In 1952 Petitioner received from said client the sum of \$12,000.00. (Tr. 10, 11.)

7. Petitioner received substantial benefits from Mrs. Iten and her estate from 1935 to 1955 for services performed by him at 138 North June Street amounting to approximately \$150,000.00. In 1952 Petitioner received from said client the sum of \$17,676.00. (Tr. 10, 11.)

8. In 1934 P. H. Titus, vice president and general manager of the Liberty Mutual Insurance Company, who resided in Boston, Massachusetts, conferred with Petitioner at 138 North June Street with reference to the employment of Petitioner by said Insurance Company as its attorney in Los Angeles. Thereafter Mr. Titus on trips to Los Angeles conferred with Petitioner in said home about the legal business Petitioner was handling for said company. Mr. Titus never conferred with Petitioner in his downtown office at any time. Various other officers and representatives of said Insurance Com-

pany from Boston and San Francisco and Los Angeles conferred about the legal business of said Insurance Company with Petitioner in said home during said period of 1935 to 1955. The bulk of the legal business handled by Petitioner for said Insurance Company consisted of the trial of cases pending in the Federal and State Courts. The substantial services rendered by Petitioner in the preparation of said cases for trial were performed by Petitioner in his home. The said preparation work consisted principally of reviewing the files of the claims department in pending cases and in preparing briefs on appeal in cases that were appealed after trial. Petitioner received substantial benefits from said client during said period amounting to approximately \$175,000.00. In 1952 Petitioner received from said client the sum of \$5,200.00. (Tr. 13, 14, 15, 16, 17.)

9. Other clients of Petitioner who conferred with him at said home during said period 1935 to 1955 were Mr. and Mrs. J. E. Thompson of Phoenix, Arizona, their nieces Mrs. Gertrude Lytton-Smith and Mrs. Ann Filor Day. Substantial fees were received from said clients. In 1952 Petitioner received a fee of \$25,000.00 from Mrs. Lytton-Smith and Mrs. Day. Mr. and Mrs. Thompson and Mrs. Lytton-Smith and Mrs. Day conferred with Petitioner in said home with reference to their legal matters up to the time said home was sold in January 1955. (Tr. 11, 12, 13.)

10. R. W. Fewel, a client of Petitioner, con-



ferred with Petitioner in said home from 1947 to 1955 with reference to the legal matters of Mr. Fewel. During said period Petitioner was paid the sum of \$62,000.00 by Mr. Fewel. In 1952 Mr. Fewel conferred with Petitioner on numerous occasions at Petitioner's home with reference to the estate of Margaret S. Bullock. For said services Petitioner was paid a fee of \$12,000.00 by Mr. Fewel, which was received subsequent to 1952 but is included in the total fee of \$62,000.00. (Tr. 17, 18, 19, 20.)

11. The utilization by Petitioner of said home at 138 North June Street in connection with his law practice was an ordinary and necessary business expense and Petitioner was entitled to a deduction on his income tax return for said expenses incurred during the year 1952. (Tr. 17.)

12. That the identical expense for the maintenance and operation of said home at 138 North June Street was claimed by Petitioner in the years 1948, 1949, 1950 and 1951. The income tax returns of Petitioner for said years were reviewed and audited by the office of the Respondent Commissioner and Petitioners' claims for such business expense during said years was approved by the Commissioner in the following amounts: For the year 1948, \$5,456.73; for the year 1949, \$4,747.76; for the year 1950, \$4,998.70. In 1951 Petitioner claimed a total business deduction of \$12,456.08 which included the expense for the operation and maintenance of Petitioners' home, the Petitioner's club expense and Petitioner's cash disbursements for

business purposes. This return was reviewed and audited by the Respondent Commissioner and in October, 1952, an additional assessment was made against Petitioner on his 1951 income in the sum of \$1,455.78, which was paid by Petitioner on October 9, 1952. (Petitioners' Exhibit A.) That the gross income of Petitioner for the year 1952 was \$62,000.00, and Petitioner claimed the sum of \$5,846.43 as a business expense connected with the operation and maintenance of his home. (Tr. 21, 22, Ex. B, Petition.)

13. In 1948 Petitioner's gross income was \$35,000.00 and, as above indicated, Petitioner was allowed a deduction of \$5,456.73 for the identical expense covering the operation and maintenance of said home. Petitioner's income for 1949 was \$40,000.00; for 1950 it was \$39,000.00 and for 1951 it was \$50,000.00. (Ex. B. Petition, Tr. 22.)

14. That the total cost to Petitioner for the maintenance and operation of the premises at 138 North June Street for the year 1952 was approximately \$20,000.00. (Tr. 34.)

15. That the amount claimed by Petitioner, to wit, \$5,846.43 in his 1952 income tax return for the ordinary and necessary expenses connected with the use by Petitioner for business purposes of the premises at 138 North June Street was reasonable and was incurred by Petitioner in conducting his law practice from said premises. That the sum of \$750.00 allowed by Respondent to cover said expenses is arbitrary and unreasonable under the circumstances disclosed by the evidence. The evidence shows con-

clusively that Petitioner in the year 1952 and prior thereto and thereafter until 1955 conducted a substantial part of his law practice from said premises and received substantial benefits by way of fees as a result thereof. (Tr. 6-22, inc.)

16. The claim of \$9,423.62 listed in Petitioner's 1952 income tax return under the title "Business Promotional Expense, 138 North June Street" consists of the sum of \$5,843.62 for the business expense connected with the maintenance and operation of Petitioners' home, and the sum of \$3,650.00 consisting of cash disbursements represented by checks payable to cash, the proceeds of which were disbursed by Petitioner in connection with his law practice. At the hearing before Mr. Wulke of the Appellate Division, the figure of \$3,650.00 was reduced by agreement between Petitioner and Mr. Wulke to \$3,150.00. Mr. Wulke as the agent of the Respondent Commissioner on December 8, 1955, in conference with Petitioner approved the allowance of the sum of \$2,000.00 of this claim for business cash disbursements. (Ex. A, B, Petition, Tr. 25, 26, 38, Respondent's Findings 17, 18.)

17. That the representatives of the Respondent Commissioner examined and verified all of the Petitioner's checks making up said total of \$3,650.00. (Tr. 33, 38.)

18. That the computation of the Commissioner's representative Mr. Wulke allowing Petitioner \$2,000.00 on said claim of \$3,150.00 was based on \$10.00 per day for a period of 200 working days as being a reasonable cash disbursement expense for

Petitioner to make in connection with his law practice. (Petition Exs. A, B.)

19. That the sum of \$3,150.00 claimed by Petitioner was an ordinary and necessary business expense and the amount thereof is reasonable and was incurred by Petitioner in connection with the maintenance of his law practice. (Petition Exs. A, B, Tr. 38.)

20. Petitioner claimed the sum of \$2,154.00 for club expense. Respondent Commissioner's representative examined all of the checks and the club bills of Petitioner and verified this amount. There is no dispute about the correctness of the amount. (Tr. 25, 26, 33, 38.)

21. The Commissioner's representative allowed only the sum of \$1,008.00 of this claim which covered only the dues paid by Petitioner to his various clubs. The sum of \$1,146.00 is the amount of the Petitioner's expenses at his clubs in addition to said dues. The Petitioner used his various clubs for the purpose of consulting with his clients during the year of 1952 and many years prior thereto and also thereafter. That in 1952 Petitioner conferred with Mrs. J. E. Thompson at the Los Angeles Country Club; Mr. R. W. Fewel, Mr. Litchfield of the Liberty Mutual Insurance Company, all of whom paid Petitioner substantial fees over a period of many years including the year 1952. Petitioner also conferred with clients at the Stock Exchange Club during the year 1952 who paid Petitioner substantial fees. During the year 1956 Petitioner and Mr. McEntee conferred with one client at the Los Ange-

les Country Club who has paid them so far the sum of \$84,000.00 for their services as attorneys. That the Petitioner's clubs consist of the Los Angeles Country Club, The Beach Club, Stock Exchange Club, University Club, and they have been used continuously by Petitioner, including the year 1952, in connection with his law practice, and the expense of his clubs is an ordinary and reasonable business expense for Petitioner to incur in connection with his law practice. (Tr. 13, 15, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32.)

22. Petitioner claimed the sum of \$3,500.00 as a business deduction for travel expense during the year 1952. (Ex. 1-A, Tr. 23, 24.)

23. Petitioner spent the total sum of \$7,500.00 for travel expenses during the year 1952. Petitioner's checks and records covering this expense were examined and verified by Respondent's representatives. (Tr. 24.)

24. The Commissioner's representatives allowed the sum of \$2,158.62 for travel expense and disallowed the sum of \$1,341.38. The sum disallowed by the Commissioner's representative is based upon his addition to Petitioner's net income of \$1,341.38, which was one-half of the cost of Petitioner's total travel expenses to Honolulu. (Ex. A, Petition.) At the hearing in this proceeding Petitioner testified that out of the total sum of \$3,500.00 he claimed the sum of \$1,500.00 to cover the Honolulu trip. The Respondent Commissioner through his representative Mr. Moore allowed one-half of the total cost of this trip as business expense. (Tr. 26.)



At the trial the Court inquired of the Government as follows:

“Does the Government contest the amount of that trip (Honolulu) as \$1,500.00 for a trip to Hawaii and staying three weeks.

“Mr. Reardon: No, your Honor.” (Tr. 23, 24.)

In view of the position of the Government at the trial and the agent's determination the claim of Petitioner for \$1,500.00 to cover travel expense to Honolulu is approved and is no longer an issue in the case.

25. The Petitioner made a trip to Boston, Massachusetts in 1952 and consulted with representatives of the Liberty Mutual Insurance Company, a client of Petitioner, with reference to the legal business of said Insurance Company which was handled by Petitioner in California. This client over the years paid Petitioner the sum of \$175,000.00, and in 1952 paid Petitioner \$5,200.00. The sum of \$1,000.00 claimed by Petitioner to cover travel expense to Boston was ordinary, necessary and reasonable. (Tr. 24.)

26. Petitioner conferred with clients in Arizona in 1952; also in La Jolla and San Diego and conducted further trips outside of Los Angeles in connection with his law practice. Petitioner claimed the sum of \$1,000.00 to cover the travel expense of all of said trips. Petitioner received substantial fees as a result of said trips during the year 1952. The sum of \$3,500.00 to cover travel expense out of the total sum of \$7,500.00 paid out by Petitioner during the

year 1952 was a fair amount to be allocated by Petitioner for business expense. Said sum of \$3,500.00 incurred by Petitioner for travel expense in 1952 was ordinary, necessary and reasonable and was incurred by Petitioner in connection with his law practice. (Tr. 24.)

27. In December, 1948, Petitioner purchased a 1949 Cadillac automobile at a cost of \$5,200.00 which Petitioner used in business exclusively. (Tr. 24, 25.)

28. Petitioner's accountant through inadvertance omitted to claim a deduction for depreciation on said automobile in the years 1949, 1950 and 1951. Said accountant left Petitioner's employ in 1952. Petitioner in March, 1953, in the course of the preparation of his income tax return for 1952 discovered said omission by said accountant, and consequently claimed in his 1952 return depreciation at the rate of \$1,000.00 per year for each of said omitted years, a total of \$3,000.00. The Commissioner allowed the depreciation deduction for 1952 in the sum of \$1,000.00 but disallowed the deduction for prior years in the sum of \$3,000.00. Inasmuch as the sole reason for omitting the claim for a deduction for depreciation on said automobile for the years 1949, 1950 and 1951 was the inadvertance of Petitioner's accountant the Petitioner was entitled to take a deduction for depreciation on said automobile for said omitted years in his 1952 return. (Tr. 24, 25.)

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[Endorsed]: T.C.U.S. Filed September 19, 1957.

